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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|-----------------------|
| 10/017,630 | 12/14/2001 | William R. Matz | 36968/265389 | 9447 |
| 7590 | 08/18/2006 | | EXAMINER | |
| Scott P. Zimmerman PLLC P.O. Box 3822 Cary, NC 27519 | | | | OUELLETTE, JONATHAN P |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3629 | |

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/017,630 | MATZ ET AL. | |
| | Examiner | Art Unit | |
| | Jonathan Ouellette | 3629 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 July 2006.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 21-53 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 21-53 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>20060703</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Response to Amendment

1. Claims 21-53 remain pending in application 10/017,630.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 21-25, 27-30, 32-36, 38-44, 48, and 50-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Hendricks et al. (US 6,463,585 B1).**

4. As per **independent Claim 21**, Hendricks discloses a processor-implemented method for predicting content, comprising: receiving content from a content database (C13 L45-49, local programming – database inherent to programming storage and transmission); receiving subscriber actions from a subscriber-action database, the subscriber action database storing information related to buttons pushed by a subscriber at a remote control (*Fig. 3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control*) while viewing content (C11 L35-65); processing the content received from the content database and the subscriber actions; and predicting future

buttons pushed by the subscriber (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits).

5. As per Claim 22, Hendricks discloses merging content received from the content database and the information related to buttons pushed by the subscriber to create subscriber choice information.
6. As per Claim 23, Hendricks discloses at least one of I) correlating the content received from the content database with the information related to buttons pushed by the subscriber.
7. As per Claim 24, Hendricks discloses i) categorizing the content received from the local content database.
8. As per Claim 25, Hendricks discloses wherein the step of processing the content comprises at least one of i) analyzing buttons pushed during preceding content and ii) analyzing buttons pushed during succeeding content.
9. As per new Claim 38, Hendricks discloses creating tailored media content that corresponds to the predicted future buttons pushed.
10. As per new Claim 39, Hendricks discloses wherein the tailored media content comprises content bundled with an advertisement for a product or service.
11. As per new Claim 40, Hendricks discloses distributing the tailored media content to the subscriber.
12. As per new Claim 41, Hendricks discloses tracking popularity of the tailored media content for a period of time.

13. As per new Claim 42, Hendricks discloses creating tailored media content that corresponds to past subscriber actions.
14. As per new Claim 43, Hendricks discloses creating tailored media content that corresponds to a demographic of the subscriber.
15. As per new Claim 44, Hendricks discloses creating tailored media content that corresponds to a purchasing history of the subscriber.
16. As per new Claim 48, Hendricks discloses providing the subscriber a log of received content.
17. As per new Claim 50, Hendricks discloses wherein the content received by the subscriber comprises an amount of time that an advertisement was received.
18. As per new Claim 51, Hendricks discloses analyzing the subscriber actions to determine when the subscriber initially receives an entire advertisement but subsequently only receives portion of the advertisement.
19. As per **independent Claim 27**, Hendricks discloses a system for predicting content, comprising: a head end facility receiving content from a content database (C13 L45-49, local programming) and subscriber actions from a subscriber-action database, the subscriber-action database storing information related to buttons pushed by a subscriber at a remote control (*Fig. 3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control*) while viewing content (C11 L35-65); a processor processing the content and the subscriber actions; the processor predicting future buttons pushed by the subscriber; the processor creating tailored media content that corresponds to the predicted future buttons pushed; and a server distributing the tailored

media content to the subscriber (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits).

20. As per Claim 28, Hendricks discloses wherein the processor correlates the content with the information related to buttons pushed by the subscriber.
21. As per Claim 29, Hendricks discloses wherein the processor categorizes the local content.
22. As per Claim 30, Hendricks discloses wherein the processor at least one of I) analyzes buttons pushed during preceding content and ii) analyzes buttons pushed during succeeding content.
23. As per **independent Claim 32**, Hendricks discloses a computer program product comprising a computer readable medium including instructions for performing the steps: analyzing content from a content database (C13 L45-49, local programming); analyzing subscriber actions from a subscriber-action database, the subscriber action database storing information related to buttons pushed by a subscriber at a remote control (*Fig.3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control*) while viewing content (C11 L35-65); and predicting future buttons pushed by the subscriber (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits).
24. As per Claim 33, Hendricks discloses instructions for performing the step of merging information related to programming and information related to buttons pushed by the subscriber to create subscriber choice information.
25. As per Claim 34, Hendricks discloses instructions for correlating information related to programming with the information related to buttons pushed by the subscriber.

26. As per Claim 35, Hendricks discloses instructions for categorizing information related to programming.
27. As per Claim 36, Hendricks discloses instructions for performing at least one of the steps of i) analyzing actions taken during proceeding content and ii) analyzing buttons pushed during succeeding content.
28. As per new Claim 52, Hendricks discloses instructions for accessing the subscriber actions taken by the subscriber while accessing and viewing content.
29. As per new **independent Claim 53**, Hendricks discloses a device, comprising: a processor communicating with memory, the processor executing software stored in the memory to receive content from a content database (C13 L45-49, local programming); communicate subscriber actions comprising information related to buttons pushed by a subscriber at a remote control (*Fig.3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control*) while viewing the content (C11 L35-65); and predict future buttons pushed by the subscriber (C11 L35-65, develop program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits).

Claim Rejections - 35 USC § 103

30. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

31. Claims 26, 31, 37, 45-47, and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks in view of Ludtke et al. (US 6,202,210).
32. As per Claims 26, 31, 37, and 45, Hendricks fails to expressly disclose wherein the processor receives buttons pushed by the subscriber to receive an alternate source of content.
33. Ludtke teaches monitoring viewer histories to include programming from additional AV sources/DVD player for marketing purposes (Fig.5, C7 L25-39).
34. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein the processor receives actions taken by the subscriber to receive an alternate source of content, as disclosed by Ludtke in the system disclosed by Hendricks, for the advantage of providing a method/system for predicting content, with the ability to increase system effectiveness by analyzing customer viewing histories on all available programming sources.
35. As per Claim 46, Hendricks and Ludtke disclose presenting types of content available to the subscriber during a period of time, with the types of content comprising an alternate video source.
36. As per Claim 47, Hendricks and Ludtke disclose wherein the step of presenting the types of content available to the subscriber during the period of time comprises integrating content available from the alternate video source into an electronic programming guide.

37. As per Claim 49, Hendricks and Lutke disclose merging the content received from the content database and information related to an alternate video source to determine what content is received by the subscriber.

Response to Arguments

38. Applicant's arguments filed 7/3/2006, with respect to Claims 21-53, have been considered but are not persuasive. The rejection will remain as **FINAL** based on the sited prior art.

39. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

40. The Applicant has made the argument that the sited prior art fails to teach or suggest predicting future buttons pushed by the subscriber

41. However, Hendricks discloses developing program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits (C11 L35-65), in other words – the Hendricks system is predicting (developed programs) what viewers will tune-in/watch (programming and advertising) instead of changing the channel or lowering the volume.

42. Furthermore, the Applicant has sited application 10/017,742 (incorporated by reference), Para 0019, for support of the “predicting future buttons pushed by the subscriber” element. However, Para 0019 simply states that “clickstream” data is gathered and tracked – which is disclosed by the sited reference (Fig.3, Remote/Customer Interface, Upstream Interactivity; C10 L38-60, subscriber interface, remote control). Para 0023 (10/017,742) does teach performing analysis on subscriber content-choice information in order to predict future subscriber actions. Therefore, the Examiner will treat the element of “predicting future buttons pushed by the subscriber,” as equivalent to developing program lineup and integrated targeted advertising based on predicted/analyzed customer program watching habits, as disclosed by Hendricks (C11 L35-65).

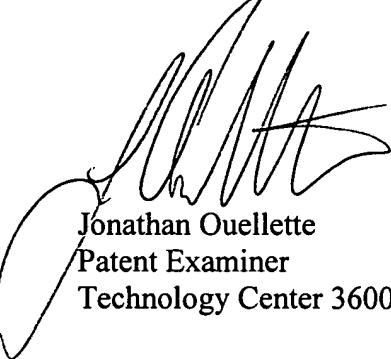
Conclusion

43. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.

44. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.

45. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (703) 308-1202.

August 11, 2006



Jonathan Ouellette
Patent Examiner
Technology Center 3600